IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5049 of 2007()

PETITIONER

AJAYAKUMAR, PEZHUVILA PUTHEN VEEDU,
VACHIKKONAM, KUTTIKADU P.O.

BY ADV. SRI.M.BALAGOVINDAN
SRI.M.R.SASITH

RESPONDENTS:

STATE REPRESENTED BY THE
CIRCLE INSPECTOR OF POLICE, CID CFS ULLOOR,
KESAVADASAPURAM, THIRUVANANTHAPURAM
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5049 OF 2007

Dated this the 17th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is now arrayed as the 3rd accused. The crux of the allegations is that on 27/3/05 the 1st accused was found to be in possession of 5 counterfeit currency notes of hundred rupees denomination. He asserted that he had obtained it from the 2nd accused. Accordingly, the 2nd accused was arrayed. He was arrested and later enlarged on bail.

2. The Investigator has subsequently arrayed the petitioner as the 3rd accused. Such arraying of the 3rd accused is allegedly on the basis of the subsequent statement of the 1st accused that not the 2nd accused; but the petitioner/3rd accused had handed over the counterfeit currency notes to him. The Investigators, it is conceded, have not deleted the 2nd accused. He also continues on the array of accused. The petitioner has

now been brought on the array as the 3rd accused. It is prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner. The petitioner is an Ex-service man. He has a good character and conduct. With absolutely no material against the petitioner, he has been brought on the array of parties on the alleged statement of the 1st accused. The petitioner is willing to co-operate with the Investigators. The petitioner may be granted anticipatory bail, it is prayed.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that though, at the moment, there is only a subsequent altered statement of the 1st accused, there is reason to suspect the involvement of the petitioner in this case. The petitioner has to be interrogated. The petitioner has criminal antecedents. He is an accused in a case in Tamil Nadu under the N.D.P.S. Act. In these circumstances, the petitioner may not be permitted to arm himself with an order of anticipatory bail, urges the learned Public Prosecutor.

3. The learned counsel for the petitioner submits that it would be totally unjust to sail to any conclusion on the basis of the prosecution under the N.D.P.S. Act initiated against the petitioner. He relies on the decision dated 1/8/07 of the

Madurai Bench of the Madras High Court wherein investigation by the C.B. C.I.D. has been ordered into the said allegation raised against the petitioner and others under the provisions of the N.D.P.S. Act. The petitioner is willing to co-operate with the Investigators now. Except the subsequent varied statement of the 1st accused, absolutely no materials have been collected by the Investigators. Any appropriate conditions may be imposed, submits the learned counsel for the petitioner.

4. Having considered all the relevant inputs, I am certainly persuaded to agree that the directions under Sec.438 of the Cr.P.C. deserve to be issued in favour of the petitioner. In coming to this conclusion, I take note of the nature of the material on which the prosecution now wants to rely on as also take note of the fact that no other circumstances whatsoever are shown to be available against the petitioner. Appropriate conditions in the interests of a fair, efficient and expeditious investigation can, of course, be imposed on the petitioner.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 24/9/07. He shall be released on regular bail on his executing a bond for Rs.50,000/-

with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 9 a.m. and 5 p.m. on 25/9/07, 26/9/07 and 27/9/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of five months. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 24/9/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.50,000/- without any sureties undertaking to appear before the learned Magistrate on 24/9/07.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. to Judge